



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

NOV 20 2008

Mr. Richard Boe
U.S. Army Corps of Engineers
New Orleans District
P.O. Box 60267
New Orleans, Louisiana 70160-0267

Dear Mr. Boe:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Supplemental Environmental Impact Statement (DEIS) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement project. This environmental document supplements the environmental impacts assessment information as it appeared in the original Final EIS for this project that was prepared in 1997 and was entitled Mississippi River-Gulf Outlet, New Lock and Connecting Channels.

EPA rates the DEIS as "EC-2," i.e., EPA has "Environmental Concerns and Requests Additional Information in the Final Supplemental EIS (FSEIS)." EPA has identified environmental concerns and informational needs to be included in the FSEIS to complement and to more fully insure compliance with the requirements of NEPA and the CEQ regulations and the Clean Water Act. Areas requiring additional information or clarification include: information needed to demonstrate compliance with applicable laws and regulations pertaining to mitigation.

Our classification will be published in the Federal Register according to our responsibility under Section 309 of the Clean Air Act to inform the public of our views on proposed Federal actions. Detailed comments are enclosed with this letter, which more clearly identify our concerns and the informational needs requested for incorporation into the FSEIS.

EPA appreciates the opportunity to review the DSEIS. If you have any questions, please contact Mike Jansky of my staff at 214-665-7451 or e-mail him at jansky.michael@epa.gov for assistance. Please send our office five copies of the FSEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460.

Sincerely yours,

Cathy Gilmore, Chief
Office of Planning and
Coordination (6EN-XP)

Enclosure

**DETAILED COMMENTS
ON THE
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT
FOR THE
INNER HARBOR NAVIGATION CANNAL LOCK REPLACEMENT PROJECT**

Additional Information Needed to Demonstrate Compliance with Applicable Laws and Regulations Pertaining to Mitigation:

The Inner Harbor Navigation Canal Lock Replacement Project Draft SEIS (DSEIS) does not contain sufficient information to support a determination of compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines and Section 2036 of the Water Resources Development Act (WRDA) of 2007, specifically with respect to compensatory mitigation for wetland impacts. The DSEIS provides only a conceptual discussion of a tentative plan to compensate for wetland impacts:

"Wetland impacts would be mitigated by using dredged material suitable for estuarine disposal to create 85 acres of wetlands between Bayou Bienvenue and Florida Avenue. However, available dilution in the mitigation site and Bayou Bienvenue is insufficient to meet applicable water quality criteria and a waiver would be required for discharge to Bayou Bienvenue. If a waiver could not be obtained either effluent would be handled differently or an alternative mitigation site would be chosen for wetland restoration." (DSEIS, Table 1-1)

Section 2036 of the Water Resources Development Act (WRDA) of 2007 requires that water resources projects comply "...with the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary." However, the DSEIS does not address the joint Environmental Protection Agency/Department of the Army final rule on compensatory mitigation for losses of aquatic resources, issued April 10, 2008. This rule amends the CWA Section 404(b)(1) Guidelines to include a range of requirements pertaining to compensatory mitigation. The rule requires, for example, the development of a mitigation plan, which includes information pertaining objectives, site selection, site protection, the work plan, performance standards, monitoring, and other key components of a successful mitigation effort. WRDA Section 2036 also requires development of a mitigation plan with similar components.

Moreover, both the final rule and WRDA 07 contain potentially applicable provisions regarding the consideration of compensatory mitigation banks. As noted above, the DSEIS provides only limited and conceptual information on the proposed compensatory mitigation. There is no indication in the DSEIS that the Corps of Engineers intends to comply with the aforementioned mitigation rule and the associated provisions in WRDA 07.

These concerns and information requirements must be addressed and incorporated into the Final SEIS. For assistance in addressing these concerns or questions pertaining to the above, please contact Mr. John Ettinger of the EPA by phone at (504) 862 1119 or by e-mail at ettinger.john@epa.gov.